No. 7922

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1992

DELL O. McCUAIG - PETITIONER

vs.

OFFICE OF PERSONNEL MANAGEMENT - RESPONDENT

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

What is the proper current interpretation of Public Law 95-366 (section 8345 (j) of title 5, United States Code)?

Subsequent to enactment of the law, the Supreme Court of the United States determined that federal annuities are compensation. Notwithstanding the non-property nature of federal annuities, the executive branch through the OPM has interpreted and administered the law to empower a state to arbitrarily determine that a federal annuity is property and to bind the federal government accordingly.

Therefore, although a federal annuity may be property for the benefit of a divorced spouse of an annuitant, the annuity may not be property for the benefit of a current spouse of an annuitant or of an annuitant.

Neither the Supreme Court "Compensation" definition nor this inequity between a divorced spouse and a current spouse could

have reasonably been foreseen by those responsible for the enactment of the law.
It is my contention that the OPM's failure to timely address and resolve these issues left the OPM without the undisturbed authority to withhold any annuity amounts from me.
It has been stated, in defense of the OPM, that that agency is not permitted to look beyond the court order. In my case, the state's property basis is revealed within the order.

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JURISDICTION

The jurisdiction of this court is invoked as it has the final authority to interpret the law.

STATEMENT OF THE CASE

The Washington State Court Qualified Domestic Relations Order No. 88-3-09411-1 Dtd. 14 Nov 1990 (APPENDIX) was delivered to the OPM. This order was pursuant to Washington State Law governing division of marital property. The order provided unilaterally, without the annuitant's consent, that the petitioner's former spouse should receive 40 percent of the petitioner's gross monthly annuity.

The OPM advised the petitioner that unless he objected within 30 days, the requirements of the court order would be fulfilled. The

petitioner objected and the OPM issued a final decision. The petitioner then appealed, timely and in turn, to the Merit Systems Protection Board Administrative Judge, the Merit Systems Protection Board, and the U.S. Court of Appeals for the Federal Circuit.

Neither the OPM nor any reviewing authority directly addressed, for the record, the apparent conflict between the federal courts definition for annuities and the statute (as it has been interpreted and administered by the OPM) nor the apparent inequity resulting therefrom. This notwithstanding the following statements and allegations included in appeals by the petitioner:

"It is unconscionable that any arm of the federal government may lawfully classify a federal annuity as property or as not property, whichever is most detrimental to the annuitant."

"An attempt in a federal court to treat and categorize federal annuities as property failed,

resulting only in a determination that the COLA portion of federal annuities is not property. (According to an article in the Sept. 1984 issue of 'Retirement Life', Federal Judge Thomas Hogan, of the U.S. Court for the District of Columbia, ruled that there is no protected property interest in the COLA portion of federal annuities."

"More recently, the federal government defined federal annuities as compensation. (According to an article in the May, 1989 issue of 'Retirement Life', in connection with a case regarding the taxation of federal annuities by states, the Supreme Court of the United States, made it clear, in a majority decision, that the annuity of a federal retiree is compensation."

"Assumptions that the federal annuity is property" (by the state and the OPM) "fly in the face of definitions made in the federal judicial system."

"The effect of the U.S. Court definitions should have been addressed by the state court

and the OPM prior to their actions in this matter. There is no undisturbed authority for withholding a portion of my annuity payments from me."

"The statement requiring the annuity to be distributed pursuant to 'a court approved settlement agreement' (within the statute) does not permit the transfer of non-existant property rights. The statement does, however, permit the exchange of compensation (federal annuity) for property when this is incident to a property settlement agreement."

"The statute may be interpreted in compliance with the compensation (as opposed to property) definitions provided by the federal courts."

ARGUMENT FOR WRIT

Neither the OPM nor any reviewing authority has addressed, in the record, the apparent conflict between the federal court's definition

for annuities and the questioned statute (as it has been interpreted and administered by the OPM).

It is therefore believed that the Writ of Certiorari is in accord with the Supreme Court rule 10.1.(c).

And, the writ should be accomplished because of inequities described in "Questions Presented."